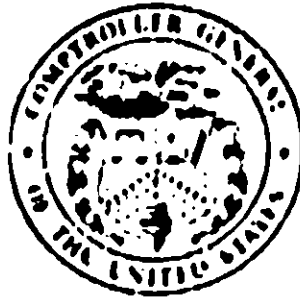


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-190691

DATE: April 17, 1978

MATTER OF:
John Amentas Decorators, Inc.

DIGEST:

Agency determination to permit bid correction is improper where bidder seeking correction asserts that intended line item bid was comprised of several elements but submits no evidence to establish that such elements, which could have been included in the bid prices for other line items, were not so included. Since agency did not request such evidence, bidder should be afforded opportunity to promptly submit such additional evidence to agency for consideration, and if bidder is unwilling or unable to do so, it should be permitted to withdraw but not correct erroneous bid.

John Amentas Decorators, Inc. (Amentas) protests the determination of the Department of the Army to permit correction before award of an erroneous bid submitted by Ahern Painting Co. (Ahern) in conjunction with invitation for bid (IFB) No. DAH CO2-77-B-2146. The basis of the protest is that Ahern had not and "cannot submit clear and convincing evidence of the extent of its error."

The IFB was for the procurement and installation of vinyl wall coverings, surface preparation and painting in various quarters at the United States Military Academy, West Point, New York. The item in question was one calling for the removal of existing wall coverings prior to the new installation (Item 12 of the IFB).

Bids were received on July 13, 1977 as follows:

Ahern Painting Co.	\$ 56,280
John Amentas Decorators	107,000
J & T Painting Co.	108,625

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By letter dated July 21, 1977, Ahern requested that it be permitted to correct item 12 of its bid from \$3900 to \$39,000 (an increase of \$35,100), claiming that its typist misread its estimator's entry of \$6.00 per square yard (SY) for the work as \$.60. After correction, item 12 would comprise almost 43% of the corrected bid of \$91,380, as opposed to approximately 12% for the other bidders and about 6% for the Government's original estimate. As evidence of the error, Ahern submitted its "original worksheet" for item 12, and a handwritten bid sheet which the typist used to type the bid. Ahern also pointed out that it is performing similar work on another contract for the agency for \$10.90 SY. The Army's estimate for the work (now claimed to be in error) was .50 SY, and the other bids received for this item were \$2.00 SY.

The bid sheet from which the transcription error was asserted to have been made shows an entry for item 12 which can either be read as \$600 or 60c [¢] (the \$ was printed on the IFB), as no decimal point appears after the "6", and the final digit is not closed. The typist interpreted the entry as 60¢ instead of \$6.00 which Ahern claims was the intended bid.

A review of the handwritten entries on the bid worksheet for items 1 through 11 shows that for most items where the estimator intended to insert a whole dollar figure (no cents), the cents portion was completed with a dash, i.e., \$2850- for item one, instead of \$2850.00, so that to be consistent with the other 11 items in the bid, the estimator would have used \$6- rather than \$600 which Ahern now claims he intended. The worksheet submitted to the Army as evidence of the intended bid for item 12 shows elements used by Ahern to determine the bid price were apparently based on square feet, and converted to square yards by multiplying the result by 9, i.e.:

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1. Removal of existing wall covering and contact, wash walls	45¢
2. Plaster repairs, etc.	12¢
3. Prime and seal	9¢
4. Protection, etc	1¢
	<hr/> 67¢
	x9
	<hr/> \$6.03

The \$6.03 figure appears to have been rounded to \$6.00 on the worksheet. No explanation of how the various per square foot component prices were arrived at appears on the record, and none of the worksheets to support the prices for items 1-11 of the bid was furnished as evidence.

Included in the record is an affidavit from the protester which states in pertinent part that:

"It cannot be said from reading the specification * * * that wall paper removal in fact represents almost a third [sic] of the entire contract. Nor should Ahern be permitted to claim that it has somehow lumped other items required in the contract within that unit price. The specification * * * which deals exclusively with wall paper removal * * * is quite clear. Removal of wall paper is a separate and distinct item and does not include either surface preparations, installation of vinyl wall covering, or painting."

Our concern in this case is not whether we would have necessarily reached the same result as the agency in the adjudication of the claimed error in the first instance, but rather whether there was a reasonable basis for the agency's conclusion in this regard. The authority to correct mistakes alleged after bid opening but prior to award has been delegated to the procuring agency and the weight

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to be given to the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by this Office unless there is no reasonable basis for the decision. J.W. Creech Inc., B-191177, March 8, 1978, 78-1 CPD____ (and cases cited therein).

In this regard, we have examined the specifications and the evidence furnished in support of the request for correction, and conclude that, based on the evidence before the agency evaluator, no reasonable basis existed to permit correction.

As indicated above, item 12 of Ahern's bid as corrected represents some 43% of the total corrected bid, which is well above what removal of existing wall coverings would be worth in terms of the overall requirements. Despite the protester's statement (quoted above), however, we note that wall paper removal was to be limited to only those walls that were to receive new wallcoverings, so that even though the section of the specification dealing with removal speaks only to the removal and subsequent washing of the walls, surface preparation (plaster repairing, priming, etc.) could have reasonably been included in the price for the removal, rather than in those items dealing with the wall covering installation and painting, since both items of work involved the identical wall surfaces. Our concern is that the agency apparently did not have before it any evidence of the elements comprising the price bid for items 1-11, so that it was unable to verify that some of the elements of work asserted to be part of item 12 were not also included in items 1-11 in the original calculation. In other words, although it is possible that the error occurred as Ahern states, it is also possible that the elements which Ahern now states made up its intended bid price for item 12 were encompassed by Ahern's prices for the work represented by items 1-11. These first eleven items appear to encompass the majority of the labor

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required for the performance of the contract, including the installation of the new wall covering, preparation of surfaces to be painted, painting, etc., and all of the materials (wall coverings and paint) to be used. In this regard, we have been informally advised that the estimated value of the wall coverings alone is \$22,500, or about 24% of Ahern's corrected bid.

Armed Services Procurement Regulation (ASPR) 2-406.3(3)(1) requires that a request for correction include all pertinent evidence, including the "original worksheets and other data used in preparing the bid * * * published price lists, and any other evidence which conclusively establishes the existence of the error, the manner in which it occurred, and the bid actually intended." (Emphasis added.)

As we stated in 53 Comp. Gen. 232, 236 (1973):

"This procedure for the correction of a bid after opening [ASPR 2-406] is consonant with the statutes requiring advertising for bids and the award of contracts to the lowest responsible responsive bidders, since these statutes are for the benefit of the United States in securing both free competition and the lowest competitive prices in its procurement activities. B-142117, March 22, 1962. Therefore, where these procedures are strictly followed so that the integrity of the competitive bidding system is not prejudiced, the United States should have the cost benefit of the bid as corrected, provided that it is still lower than any other bid submitted.

* * * * *

The potential * * * fraud * * * flowing from a decision allowing correction

*** is protected against by the high standard of proof necessary before correction is authorized ***. (Emphasis added.)

It is our belief that the high standard of proof required by the regulation before bid correction is allowed has not been met in this instance when we consider (1) the possible unbalanced nature of the corrected bid, (2) that no evidence was furnished to the agency relating to the pricing of the work in the IFB which comprises the majority of the labor and all of the materials required under the contract, and (3) the nature of the ambiguities in the bid work sheet used to transcribe the bid.

Ahern furnished this Office with the affidavits of the estimator preparing the bid and the typist who typed the bid claimed to be in error. These affidavits were not part of the evidence submitted to the Army to support the request for correction. The estimator's affidavit makes no direct mention of the content of the worksheet for item 12, or what he actually intended as the price for item 12. He states that:

"For the purpose of submitting the bid on 13 July 1977 for the above contract, I estimated the unit cost for each item 1 through 12. My work sheet [submitted for the record] for item 12 is in my handwriting. I inserted each unit price in my work bid sheet [submitted for the record] and gave the bid sheet to [the] Secretary, to calculate the lump sum amounts and to type the bid sheet in final form for submission of the bid."

The affidavits do not persuade us that the clear and convincing evidence standard for bid correction has been met, since they do nothing to alleviate

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the concern expressed above. Accordingly, and regardless of the good faith of the party involved, we believe that correction should have been denied on the basis of the evidence presented.

However, we have no basis to conclude that all of the pertinent evidence necessary to satisfy the high standard of proof required in this case could not have been furnished by Ahern had the agency specifically requested it. We therefore are of the opinion that Ahern should be afforded the opportunity to promptly submit such additional evidence to the agency for its consideration. In this regard, we suggest that any additional affidavits furnished be more specific than the one furnished by the firm's estimator to this Office. If Ahern is unable or unwilling to submit such evidence to the agency, we recommend that it be permitted to withdraw, but not correct its bid.

The protest is sustained.

Deputy

R. F. K. 11/11/41
Comptroller General
of the United States